



POLICE DEPARTMENT
NEW YORK, N.Y. 10038
DEPUTY COMMISSIONER-TRIALS

October 14, 2016

-----X
In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Detective Samir Gonsalves : ORDER
Tax Registry No. 932724 : OF
Brooklyn Court Section : DISMISSAL
-----X

Detective Samir Gonsalves, Tax Registry No. 932724, Shield No. 766, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2014-12864, as set forth on form P.D. 468-121, dated January 8, 2015, and after a review of the entire record, and after pleading guilty to Specification 5 has been found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Detective Samir Gonsalves from the Police Service of the City of New York.


JAMES P. O'NEILL
POLICE COMMISSIONER

EFFECTIVE: 0001 hrs. November 16, 2016



POLICE DEPARTMENT
NEW YORK, N.Y. 10038
DEPUTY COMMISSIONER TRIALS

-----X
In the Matter of the Charges and Specifications :

Case No.

- against - :

2014-12864

Detective Samir Gonsalves :

Tax Registry No. 932724 :

Brooklyn Court Section :

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Rosemarie Maldonado
Deputy Commissioner Trials

APPEARANCE:

For the Department: Daniel Maurer, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Hugo G. Ortega, Esq.
Tanner & Ortega, LLP
30 Vesey Street – PH Suite
New York, NY 10007

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

Charges and Specifications:

1. Said Detective Samir Gonsalves, while off-duty and assigned to the Brooklyn Court Section, on or about September 29, 2013, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective did, during a motorcycle rally, wrongfully pursue a vehicle with several others, resulting in the assault of the motorist of said vehicle.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED
CONDUCT GENERAL REGULATIONS

2. Said Detective Samir Gonsalves, while off-duty and assigned to the Brooklyn Court Section, on or about September 29, 2013, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective, did fail to take police action in that said Detective did fail to intervene or prevent an assault and/or did fail to call 911.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED
CONDUCT GENERAL REGULATIONS

P.G. 212-32, Page 1, Paragraph 2 - OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE SERVICE COMMAND OPERATIONS

3. Said Detective Samir Gonsalves, while off-duty and assigned to the Brooklyn Court Section, on or about September 29, 2013, having been made aware of an allegation of corruption or other misconduct against other Members of the Service, did fail to notify the Internal Affairs Bureau, as required.

P.G. 207-21, Page 1, Paragraph 1- ALLEGATIONS OF CORRUPTION AND
OTHER MISCONDUCT AGAINST MEMBERS OF THE SERVICE
COMPLAINTS

4. Said Detective Samir Gonsalves, while off-duty and assigned to the Brooklyn Court Section, on or about September 29, 2013, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective did improperly cover the license plate on the motorcycle he was utilizing on September 29, 2013.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED
CONDUCT GENERAL REGULATIONS

5. Said Detective Samir Gonsalves, while off-duty and assigned to the Brooklyn Court Section, on or about September 29, 2013, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective did fail to obey a traffic control device in that said Detective did drive through at least four (4) steady red lights while participating in a motorcycle rally.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED
CONDUCT GENERAL REGULATIONS

6. Said Detective Samir Gonsalves, while on-duty and assigned to the Brooklyn Court Section, in or about October 2013, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective did give false and misleading statements to the Manhattan District Attorney's Office during a criminal

investigation in that said Detective denied any knowledge about the incident that took place on September 29, 2013, when in fact he had been present at the time of the incident.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED
CONDUCT GENERAL REGULATIONS

Hearing Dates:

August 4 and 5, 2016

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 4 and August 5, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges except for Specification 5 where Respondent pleaded guilty. The Department called Lieutenant Euclides Lopez and Assistant District Attorney Joshua Steinglass as witnesses. Respondent called James Moschella as a witness and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, assessing the credibility of the witnesses, and after Respondent pleaded guilty to Specification 5, I find Respondent guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The following is a summary of the relevant facts that are undisputed. On September 29, 2013, hundreds of motorcycle riders participated in a rally through the streets of Queens, Brooklyn and Manhattan. Many participants, including several illegal dirt bikes and ATVs, drove through the streets of the City with a general disregard for traffic laws. (Tr. 32, 34; DX 1) Respondent joined the rally with the Frontline Soldiers, a motorcycle club whose membership consisted primarily of members of service. Respondent was introduced to the club by former

Detective Person A, whom he had worked with and with whom he shared an interest in motorcycles. (Tr. 157-158) During this rally, members wore matching leather vests bearing the club's name and emblem. (Tr. 26, 157-159)

It is uncontested that Respondent and other bikers congregated at a Mobil gas station on the corner of Linden Boulevard and Pennsylvania Avenue, Brooklyn. (Tr. 161; DX 1) While parked at that gas station, Respondent's license plate was covered by tape. The tape was removed before Respondent rode off onto the street. (Tr. 36, 162)

While travelling together on the West Side Highway in Manhattan, a group of motorcyclists surrounded a dark colored Range Rover SUV (hereinafter "SUV"). Video footage captured one of the bikers pulling directly in front of the SUV and braking in an apparent attempt to bring the SUV to a stop. (Tr. 45; DX 1) This maneuver caused the SUV to bump into the biker. Traffic came to a halt as a number of bikers dismounted their motorcycles and approached the SUV. The driver of the SUV quickly accelerated, plowing through a group of riders and leaving at least one biker laying on the ground. (Tr. 45; DX 1, DX 5 p. 714)

A number of motorcyclists pursued the SUV along the highway. When the SUV came to a stop, bikers dismounted and unsuccessfully attempted to open the SUV door before it drove away. (Tr. 47-48; DX 1) Respondent, Person A, and other bikers continued to follow. (Tr. 47, 176-177; DX 1, 2A-2C) This pursuit continued until coming to a halt on 178th Street between Wadsworth and St. Nicholas Avenues in Manhattan. (Tr. 181) This time, bikers smashed the SUV windows, pulled the driver out of the vehicle and assaulted him while his wife and child were in the vehicle. (Tr. 48; DX 1) Person A smashed an SUV window during the altercation. (Tr. 48; DX 1) Shortly thereafter, Respondent met Person A and other bikers at a nearby Shell

gas station. Respondent helped Person A bandage his injured arm with what appears in the video footage to be a t-shirt. (Tr. 49-50, 189-191, 240; DX 1, 2D-2F)

This incident generated significant media coverage. (Tr. 119, 243) On October 2, 2013, during a court appearance on an unrelated criminal matter, Respondent told his attorney, James Moschella, that he was at the September 29 motorcycle rally. (Tr. 105, 193-194) Shortly after their conversation, Moschella called Inspector Joe DiBartolomeo, Commanding Officer of the Special Investigations Unit, Internal Affairs Bureau. Moschella informed DiBartolomeo that Respondent was at the September 29 incident and was being represented by his firm in connection with the investigation. (Tr. 101-103)

On October 25, 2013, the Manhattan District Attorney's Office interviewed Respondent about the motorcycle rally and the violence that ensued. (Tr. 112, 200) He testified before a grand jury on October 29, 2013. (Tr. 121, 123, 169; DX 5)

Specification No. 6

In dispute is whether Respondent gave false and misleading statements to the Manhattan District Attorney's Office during an interview relating to the criminal investigation of the September 29, 2013, assault of the SUV driver. The relevant testimony and evidence concerning the disputed facts are summarized below.

Assistant District Attorney Joshua Steinglass was the lead prosecutor assigned to this investigation. After reviewing a YouTube video which placed Respondent at or about the scene, Steinglass and his team brought him in to be questioned as a potential witness. (Tr. 111-112) According to Steinglass, Respondent was asked "extensively about his background, the background of the Frontline Soldiers, the background of the motorcycle rally that took place on September 29, 2013, his itinerary on September 29, 2013, the extent to which he witnessed the

assault [...], and the events leading up to the assault as well as the events that happened after the assault including conversations that he had had with [former] Detective Person A and other people who had been on the motorcycle ride.” (Tr. 115-116) The ADAs did not have Respondent view the video footage before the questioning commenced. (Tr. 115) Steinglass and ADA Erin Choi Pilnyak took handwritten notes of Respondent’s answers. (Tr. 113, 115; DX 4A-4B)

Approximately thirty minutes into the interview, Steinglass became concerned that Respondent’s account was “flatly contradicting” the events captured on camera. Most notably, Respondent denied having seen the SUV that day. (Tr. 122; DX 4A) In addition, Respondent told the ADAs that:

- He obeyed the law during the motorcycle rally and did not recall witnessing any traffic infractions by other participants.
- The last time he saw Person A during the rally was coming off the Brooklyn Bridge into Manhattan.
- He did not recall seeing bikers dismount their motorcycles.
- He did not recall bikers trying to open the SUV door.
- He exited the highway at 178 Street, but because there was traffic, rode to the FDR Drive and did not see the SUV get bashed.
- He did not recall any conversation at the gas station about the SUV or why Person A’s arm was bleeding. (DX 4A-4B)

Steinglass played the video footage for Respondent and warned him about the consequences of making false statements. According to Steinglass, at that point Respondent’s answers shifted to what he described as the “I don’t remember mode.” (Tr. 121-122) Respondent’s perceived evasiveness prompted Steinglass to issue him a second set of warnings concerning the crimes of contempt and perjury. Steinglass testified that Respondent’s answers did not change appreciably after the warnings and that he continued to deny having seen the SUV that day. Steinglass and his team became “exasperated.” (Tr. 122) Ultimately, they informed both Respondent and his attorney that they intended to put him before a grand jury and

that if he persisted in "pretending" not to remember he would be committing the crime of evasive contempt and perjury. (Tr. 121-122) Steinglass described this two hour interview as "one of the most difficult" he has had to conduct in his eighteen years as an ADA. (Tr. 150-151)

Prior to Respondent's grand jury testimony, Steinglass again warned Respondent and his attorney that Respondent was "going to have real problems if he ... [went] into the grand jury and continue[d] to lie." (Tr. 123) According to Steinglass, Respondent then stated, "Well, why would you put me in the grand jury if you think I'm lying?" Steinglass replied, "I'm not going to abandon the investigation in the grand jury with a witness who has useful information just because he doesn't want to share it...." (Tr. 123-124)

Due to concerns about Respondent's truthfulness, at the outset of his grand jury testimony Steinglass again issued warnings to Respondent and played the video recording. (Tr. 125, 145) The transcript of Respondent's grand jury testimony was produced at this disciplinary hearing pursuant to an unsealing order. (Tr. 124; DX5) The following is a summary of the answers that were materially different from those he provided at the Steinglass interview.

- Respondent affirmed that he had seen the SUV on September 29:
 - Q: ...Did there come a time when you saw a Range Rover being surrounded by motorcycles?
 - A: Yes.
 - Q: Let me ask you a question. When did you first notice this Range Rover?
 - A: When traffic stopped and we got to flow, the Range Rover took off.
 - Q: Okay. So did you see what was going on with the Range Rover that caused it to stop in the first place?
 - A: No.
 - (DX 5, p. 710-711)
- Respondent admitted that he saw bikers dismount their motorcycles along the West Side Highway:
 - Q: And did you say earlier at this point you also noticed other bikers off their bikes?
 - A: Yeah.
 - Q: Approximately how many bikers did you notice off their bikes?

A: If I can put a number, probably two, two or three. (DX 5, p. 715)

- Respondent admitted seeing other Frontline Soldiers while riding on the West Side Highway:

Q: Now, when the – you said you the Range Rover started to drive, you started driving, you passed some motorcycles laying in a street, a body laying in the street, some other motorcyclists off their bike standing in the roadway, at that point did you notice the whereabouts of any of the other Frontline Soldiers?

A: As I'm continuing riding?

Q: Yes.

A: Yeah. I notice [Person A] passes – well, someone with a jacket like [Person A] with the red helmet, he passes. (DX 5, p. 716)

- Respondent testified that bikers approached the SUV when it stopped on 178 Street: “...bikers basically was [sic] going after the SUV. And one – when people came and attacked the SUV at that time I made...a left to avoid any, you know, situation.” (DX 5, p. 726)

- Respondent admitted seeing bikers smash a window:

Q: Did you see the SUV come to a stop?

A: Yes.

Q: What exactly – what exactly did you see happen to the SUV?

A: This.

Q: Well, what is this?

A: Well, bikers attacking the SUV....

Q: How are bikers attack[ing] the SUV?

A: Smashing the windows.

Q: Which window did you see bikers smashing?

A: The driver's.

Q: Driver's window?

A: Yes.

Q: What about the rear window of the SUV?

A: I didn't, no.... (DX 5, p. 728)

Q: Did you see anyone open the ... driver's door of the SUV?

A: I actually remember like a group of guys on top of the window, the passenger door....basically smashing the window... (DX 5, p. 739-740)

Q: ...so where was [Person A] at the time that the Range Rover was being attacked, as you put it?

A: I don't know but my attention was focused [sic] on the guys attacking the driver side window. So I wasn't basically looking for – I didn't see [Person A]. My attention was focused on the guys attacking the driver side window.

Q: What do you do at that point?

A: I reversed cause I was basically saw the position I was in, so I backed my bicycle up and I made a left turn to get out of the situation....

Q: And you're telling us that you did not see what [Person A] was doing or where [Braszczok] was at the time that you backed up your bike?

A: At that moment all my attention was drawn towards these guys attacking the driver side window, that's it, I didn't see where [Person A] was at, no.... (DX 5, p. 730-731)

- Respondent saw the cut on Person A's arm and that it was bleeding and discussed it with him:

Q: Did you notice anything unusual about [Person A]?

A: Yes, he had a cut on his forearm....

Q: And how could you tell that he had a cut on his forearm?

A: There was bleeding.

Q: Did you ask him –

A: No.

Q: -- about how he had cut his forearm?

A: I, I, I – yeah, I asked him what happened and he said, um, a glass, he got cut by glass. ...

Q: Did you ask him how he got cut by glass?

A: No.

Q: Why not?

A: I didn't want to know. I just didn't want to know.

Q: Why did you not want to know?

A: He looked – he had – he looked like something happened, like he was in shock, or you know. (DX 5, p. 735-736)

- Respondent admitted witnessing a number of traffic infractions during the rally:

Q: [D]id you see unauthorized vehicles on the roadway, such as dirt bikes and ATVs?

A: Yes.

Q: Did you see motorcycles popping wheelies and standing up on their seats?

A: Yes.

Q: Did you see bikers riding on the sidewalk?

A: Yes.

Q: Bikers running through red lights?

A: Yes....

Q: Did you yourself participate in some of this reckless driving?

A: I believe I ran a couple of lights, yes....

Q: How about running through stop signs?

A: Yes. (DX5, p. 707, 709)

Respondent was not charged with committing any crimes during the grand jury proceeding. (Tr. 145)

During Respondent's testimony at this disciplinary hearing, he denied making false or misleading statements during his interview with ADA Steinglass and asserted that he provided truthful answers to questions based on his memory at the time. Respondent specifically repudiated Steinglass' assertions that during the ADA's interview Respondent claimed not to have seen the SUV on September 29, 2013. (Tr. 175, 195, 199, 241) Respondent explained that once he was shown the videos, he was able to see that some of the events he could not remember had, in fact, occurred. For example, when he told Steinglass that he did see not anybody driving through red lights or committing other traffic infractions, he was being truthful because he genuinely did not remember seeing those infractions. Once Steinglass showed Respondent the videos, his recollection was refreshed. (Tr. 175)

Specifically, Respondent recounted under oath that he was riding his motorcycle on the West Side Highway with other bikers when traffic came to a halt. (Tr. 172-173) He "broke free" and drove further down the highway where he came upon "bikers on the ground and the SUV taking off." (Tr. 173) Respondent followed the SUV "intending to get a license plate" because he assumed the driver had just left the scene of an accident and there appeared to be injuries. (Tr. 174, 176)

Respondent confirmed that the bikers followed the SUV on the West Side Highway until they exited and travelled down 178 Street. Though he proceeded with the group, it was his intention to go home and he merely followed traffic signs because he was "unfamiliar" with that area of Manhattan. Respondent testified that he did not anticipate what would happen to the SUV. According to Respondent, he "just barely" crossed the intersection of 178th Street and Wadsworth Avenue, and was about half of a block away, when he saw bikers "gathering around

the SUV...." Respondent described it as "a crazy, chaotic scene" but did not witness anyone make "physical contact" with the vehicle. He told this tribunal that he "panicked" and, because of his modified duty status, left to go home. (Tr. 178, 181, 185-189, 231)

Respondent testified that after he left 178 Street, he saw Person A's friend and followed him into a Shell gas station. Shortly thereafter, Person A joined them. Respondent noticed what he described as a "cut or scratch" on Person A's arm and helped him bandage it. He did not ask Person A how he was injured and Person A did not volunteer that information. According to Respondent, there was "no reason" for discussion because the injury was not "serious" and could have resulted from, "[r]ocks, tree branches...[or] rubbing up against other motorcyclists." (Tr. 190-192)

On September 30, 2013, at 0133 hours, Respondent sent the following message to a Frontline Soldiers chat group: "I just wake up from good nap and I got say Al you my nigga for life we are true Rebels and kindred sprits [sic]. And Prez, you one of us, also it was a eventful day." At trial Respondent testified that what he meant by that message was that Pers. A was also a former undercover officer, "so just undercover experiences that we're all like brothers, and we're just adrenaline junkies into ... fast stuff." (Tr. 212; DX 3, Court Ex. 1) Respondent then sent the following description of the day to a detective who did not participate in the rally: "Dude it was Banda and bands of bikers wilding out yesterday ... Lol niggas was wilding out." (Tr. 212) Respondent also sent Person A a picture of a news headline depicting Person A wearing his Frontline Soldiers vest near the SUV with a headline that read, "Lock your doors. Mean Streets. Protecting Your Family From Road Rage." (Tr. 242-243)

To establish a false statement violation, "petitioner must demonstrate that the employee intentionally misrepresented certain facts 'in order to mislead or deceive....'" *Dep't*

of Environmental Protection v. Martinez, OATH Index Nos. 734/06 & 1486/06, at 5-6 (May 24, 2006) (citing, *inter alia*, *Dep't of Correction v. Nickless*, OATH Index No. 1658/95, at 6 (Dec. 4, 1995)). Moreover, to prove this charge, the alleged false statements must involve a material deviation from the actual incident. See *Dep't of Corr. v. Rodriguez*, OATH Index No. 277/06 (Mar. 29, 2006) at 11, 15-16.

Resolution of this charge rests on an assessment of witness credibility. In making such determinations, the trier of fact should consider a wide range of factors, including but not limited to, witness demeanor, corroborating evidence, the consistency of a witness' account both at trial and over time, the degree to which the witness is interested in the outcome of a case, the potential prejudice or bias of the witness, and the degree to which the witness' account is logical and comports with common sense and general human experience. After carefully considering the evidence and witness testimony in this case, this tribunal finds that the preponderance of the credible evidence presented at trial proved that Respondent is guilty of the charged misconduct.

There were several key factors which convinced this tribunal that Respondent made false statements to the Manhattan District Attorney's Office. At the outset it is important to highlight that ADA Steinglass was a very credible witness. He provided a straightforward and professional account regarding his interview of Respondent and supported it with contemporaneous notes taken by both him and his colleague. Moreover, Steinglass demonstrated no undue bias against Respondent, no compelling interest in the outcome of this disciplinary case and no motive to falsely accuse Respondent of lying. Accordingly, I believed ADA Steinglass' critical testimony that during his interview Respondent made the misrepresentations of material facts listed above, the most notable of which was denying that he had seen the SUV on September 29, 2013.

In stark contrast, I found Respondent to be an unreliable and disingenuous witness whose efforts to convince this tribunal that Steinglass was wrong were convoluted and contrived. It is especially troubling that Respondent presented markedly different versions of material events to the ADA, the grand jury and this tribunal. For example, as noted above, Respondent insisted during the Steinglass interview that he had not seen the subject SUV at all on September 29, 2013. Just four days later, however, he provided sworn testimony before the grand jury that clearly contradicted this repeated assertion. Respondent specifically admitted to the grand jury that he not only saw the SUV, he actually followed it because he thought it had been involved in a hit and run accident. In addition, he disclosed that at 178 Street he witnessed "a group of guys on top of the window, the passenger door...basically smashing the window...." Respondent presented yet another version of events at this disciplinary hearing. Although he confirmed that he saw bikers "gathering" around the SUV at 178 Street, he contradicted his grand jury testimony by denying that he had witnessed those bikers smash an SUV window.

A second example is Respondent's conflicting descriptions of his interaction with Person A at the Shell gas station. Even though he is seen on video wrapping Person A's arm, he told Steinglass that he did not recall any conversation with his friend about this arm injury. In contrast, Respondent specifically told the grand jury that he asked Person A about his bleeding forearm and that Person A replied that he "got cut by glass...." His version of events changed again at this disciplinary hearing where he stated that Person A did not volunteer any information about the injury and Respondent did not ask. He added that there was "no reason" to do so because the injury was not "serious" and he could have resulted from "rocks, tree branches" or other riding hazards.

These inconsistent statements would alone be sufficient to raise serious questions as to the reliability of any witness. Here they are magnified by Respondent's significant interest in the outcome of this case in which he faces serious charges that could potentially derail a career in law enforcement.

In addition, Respondent's explanation for these material discrepancies was self-serving and lacked the ring of truth. He unsuccessfully attempted to convince this tribunal that he was truthful when he spoke to Steinglass and that any variation with his grand jury testimony was based on "what actually happened in the video as opposed to what [he] remember[ed] in real time." (Tr. 249) He claimed that his use of the phrases, "I recall," "I noticed," "My attention was drawn," and "I observed," during his grand jury testimony were simply "a poor choice of words" because he was relying on what he had seen on the videos and not on his independent memory. (Tr. 186, 265)

I found Respondent's purported explanation to be no more than an after-the-fact fabrication made in an attempt to reconcile the irreconcilable. While it is axiomatic that viewing video footage can refresh a witness's recollection, here this was clearly an exaggerated claim. For example, it is unlikely that confusing silent video footage with memory accounts for Respondent's sudden recollection at the grand jury that Person A said he cut his arm with glass. Likewise, it is highly unlikely that a similar confounding of memories could account for Respondent's subsequent retraction of that statement at this disciplinary hearing where he testified that he did not talk to his friend about the bloody cut he helped bandage.

In sum, this Court finds that the Department Advocate's Office satisfied its burden of proving that Respondent did make numerous false and misleading statements to Steinglass

during his October 25, 2013, interview. Accordingly, Respondent is found guilty of the misconduct charged in Specification 6.

Specifications 1 and 2

Respondent is charged with failing to take police action in that he did not intervene or prevent the assault and/or call 911. Patrol Guide Section 212-32 requires that when an off duty uniformed members of service is a "participant or a witness" to an "unusual police occurrence" he or she is required to (i) remain at the scene of the incident, if feasible and consistent with personal safety, and (ii) request the response of the patrol supervisor, precinct of occurrence. Section 212-32 further explains that, "When remaining at the scene is inappropriate, the uniformed member of the service concerned may leave the scene; however, said member must promptly notify the desk officer, precinct of occurrence, and be guided by the desk officer's instructions."

It is undisputed that on September 29, 2013, Respondent was, at the very least, witness to two unusual police occurrences: the scene of what appeared to be a hit and run accident where at least one person seemed to be injured; and, when a group of bikers dismounted their motorcycles and surrounded the SUV they had been pursuing. I also believe that, as he testified at the grand jury, Respondent witnessed a third unusual police occurrence: motorcyclists smashing the window of that SUV. It is further uncontested that Respondent did not intervene, call 911, or personally make any of the notifications set forth in the Patrol Guide. (Tr. 188)

Although this tribunal acknowledges that it may not have been feasible for Respondent to personally intervene because he did not have a shield or weapon, the Patrol Guide makes clear that it was not acceptable for him to merely leave the scene. By doing so, this member of service failed to provide the Department with relevant information concerning the commission of a

crime. Moreover, an alleged belief that others called 911 does not relieve a member of service of this responsibility. Accordingly, he is found guilty of the misconduct charged in Specification 2.

Specification 1 charged Respondent with engaging in conduct prejudicial to the good order, efficiency or discipline of the Department by wrongfully pursuing the SUV with others in the motorcycle rally, resulting in the assault of the motorist. I find that Respondent is guilty of this charge.

It is undisputed that Respondent pursued the SUV with other bikers. While Respondent claimed that he followed the SUV to take down its license plate number and report it, it is undisputed that he never did so. His failure to record the license plate number and/or make the required notifications casts serious doubts on his assertion that he was following the SUV for a legitimate purpose. Given his lack of candor, and his failure to fulfill his obligations as a member of service, it is more likely than not that Respondent was in the pursuit of the SUV as a participant in this motorcycle mob. As such, Respondent contributed to this dangerous situation and is guilty of the misconduct set forth in Specification 1.

Specification 3

Respondent is charged with failing to notify the Internal Affairs Bureau after having been made aware of misconduct concerning a member of service. Based on the above record as a whole, I find that the Department Advocate satisfied its burden of proving that Respondent knew Person A had engaged in misconduct and did not report it to the Internal Affairs Bureau.

At the outset I note that Respondent's reluctance to provide truthful information concerning Person A was evident throughout the record. For example, I believe that he lied to the ADA when he stated that the last time he saw Person A during the rally was near the Brooklyn Bridge after the group entered Manhattan. His equivocal grand jury statement on this

point supports this credibility finding. Steinglass specifically asked Respondent whether he had seen Person A after the SUV left the scene with motorcycles and a body lying on the street. His answer is telling. Respondent initially responds, "Yeah. I notice A1 [Person A] passes." Then he seems to catch himself and adds, "well someone with a jacket like A1 with the red helmet, he passes. He passes me." As evinced by the television photo Respondent sent to Person A shortly thereafter, Respondent recognized Person A at the rally and clearly knew what identifiable items of clothing and helmet he had worn that day. (Tr. 242-243) Moreover, video evidence confirmed that they were riding in close proximity to each other in Manhattan. (Tr. 177-180) Thus, under these circumstances, I cannot credit Respondent's claim that he had no independent memory of Person A's whereabouts during the pursuit. (Tr. 177, 179)

Respondent's reticence to be honest about Person A was also reflected in his testimony about his friend's injured arm. Respondent testified before the grand jury that, soon after he had witnessed bikers smashing the SUV's windows, Respondent saw Person A's cut forearm and was told that he had been "cut by glass." Common sense and logic dictate that a bleeding forearm admittedly cut "by glass" would lead a NYPD detective to at least suspect that Person A might have been involved in the violence. Instead, Respondent told the grand jury that he did not inquire further because he "did not want to know."

When examined within the context of this record, this revealing evidence supports a finding that Respondent knew about his friend's misconduct but chose to turn a blind eye. Whether his motive was to protect himself or his friend, it is clear to this tribunal that Respondent chose not to be forthcoming about Person A. Accordingly, I find Respondent guilty of the misconduct charged in Specification 3.¹

¹ In making this finding I note that I credited Mr. Moschella's testimony that he called the Department regarding Respondent's participation in the rally and his legal representation in the matter. This call, however, did not satisfy the requirements of Patrol Guide Section 207-21. (Tr. 101-103)

Specification 4

Respondent is charged with improperly covering the license plate on the motorcycle he was utilizing on September 29, 2013. While Respondent acknowledged that his license plate was covered while he was at the Mobil gas station in Brooklyn, he could not recall how that came to be. (Tr. 161-162) He further testified that he actually had "no independent memory" of what occurred while waiting at the gas station. (Tr. 163) However, he testified that he remembered removing the tape before leaving the gas station because he knew that it was illegal to drive with a covered license plate. (Tr. 164)

When asked on direct examination if it was possible that he himself had been the one to cover his license plate and that he just did not remember, Respondent responded affirmatively. (Tr. 165) However, on cross-examination, he admitted that he had told Department investigators during a GO-15 interview that he had been the one to cover the license plate. (Tr. 228-229)

Respondent asserted that he did not actually operate his motorcycle on the street with the license plate covered, and therefore did not violate the law. Section 402(a) of the New York Vehicle and Traffic Law, states that "No person shall operate, drive or park a motor vehicle on the public highways of this state" without license plates. It further states that license plates "shall not be knowingly covered or coated with any artificial or synthetic material or substance that conceals or obscures such number plates or that distorts a recorded or photographic image of such number plates." VTL §402(1)(b). Though there is no evidence that Respondent drove his motorcycle with an obscured license plate, it was nevertheless parked at the gas station. Under New York State law, a "public highway" is defined as "Any highway, road, street, avenue, alley, public place, public driveway or any other public way." VTL §134. If the public has general

right of passage in motor vehicles, the road or way is considered a "public highway." *People v. Garcia*, 85 Misc. 2d 693, 694 (N.Y. Dist. Ct., Suffolk County 1975); *Weeks v. Byrnes*, 33 N.Y.S.2d 65 (N.Y. County Ct., Erie County 1942).

By parking his motorcycle in that gas station with an obscured license plate, Respondent violated New York law. As such, Respondent is guilty of Specification 4.

Specification 5

Respondent pled guilty to failing to obey a traffic control device in that he drove through at least four steady red lights while participating in a motorcycle rally. At trial he attempted to explain that he did so because he was "riding in a pack," going "with the flow of traffic," and believed that if he had stopped, he would have caused an accident. (Tr. 168) Notwithstanding his purported rationale, Respondent has pled guilty and is found guilty of the misconduct set forth in Specification 5.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 1, 2003. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of (i) giving false and misleading statements to the Manhattan District Attorney's Office during a criminal investigation, (ii) wrongfully pursuing a vehicle with several others, resulting in the assault of the vehicle's motorist, (iii) failing to take police action by failing to intervene or prevent an assault and failing to call 911, (iv) failing to notify Internal Affairs after having been made aware of misconduct against other Members of Service, (v) improperly covering the license plate on the motorcycle he was utilizing on

September 29, 2013, and (vi) driving through at least four steady red lights while participating in a motorcycle rally.

Respondent's continuous inability to be truthful regarding his knowledge about criminal activity casts into serious doubt whether he has the judgment and character needed to serve the public as a uniformed member of this Department. Respondent did not "just fail to report" information as a witness to potential criminality, he purposely left the scene of a violent and dangerous attack, thus abandoning the victim in contravention of his duty to preserve human life. Thereafter, Respondent deliberately and continually lied to an Assistant District Attorney and then lied to this tribunal about what he knew. Respondent's self-serving dishonesty, and refusal to provide aid, is a certain detriment to the Department that cannot be tolerated. Although each separate misrepresentation or finding of guilt may not warrant termination, when viewed as a whole, the totality of Respondent's misconduct leaves this tribunal no other choice. The gravity of Respondent's misconduct warrants termination. Such a penalty is consistent with recent precedent involving similar misconduct. *See Case 2012-8723* (December 4, 2014)(a fourteen-year detective was dismissed from the Department for making false statements in a criminal court affidavit, an arrest report worksheet, a property invoice and the grand jury)

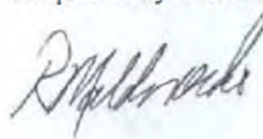
Accordingly, I recommend that Respondent be DISMISSED immediately from the New York City Police Department.

APPROVED

NOV 16 2016

James P. O'Neill
JAMES P. O'NEILL
POLICE COMMISSIONER

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE SAMIR GONSALVES
TAX REGISTRY NO. 932724
DISCIPLINARY CASE NO. 2014-12864

On his last three annual performance evaluations, Respondent received the following ratings: in 2013, he received an overall rating of 4.0 "Highly Competent;" in 2014, he received an overall rating of 4.5 "Extremely Competent/Highly Competent;" and in 2015, he again received an overall rating of 4.0 "Highly Competent." He has been awarded one medal for Meritorious Police Duty.

[REDACTED]

[REDACTED]

[REDACTED]. Respondent has no prior formal disciplinary history.

Rosemarie Maldonado
Deputy Commissioner Trials